



UNITED STATES
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July 5, 2011

BY FACSIMILE

Honorable Laura Taylor Swain, U.S.D.J.
United States District Court
Southern District of New York
40 Centre Street, Room 1205
New York, New York 10007-1581

MEMO ENDORSED

Re: SEC v. Amerindo Investment Advisors Inc., et al.,
05-CV-5231 (LTS) (S.D.N.Y.)

Dear Judge Swain:

I am counsel for the plaintiff Securities and Exchange Commission ("Commission") in the above-captioned action and write to provide the Court with a status update. As noted in the staff's previous letters, the parties have been awaiting the Forfeiture Order in the parallel criminal action to become final upon the resolution of investor petitions. The United States Attorney's Office ("USAO") has now successfully resolved all of the petitions and the Commission staff and the USAO have resumed discussions with the defendants concerning a potential distribution of forfeited assets to Amerindo investors. The parties are discussing a potential agreement pursuant to which the defendants would consent to the Department of Justice distributing a portion, but not all, of the forfeited Amerindo assets to all Amerindo investors – both the victims identified in the parallel criminal action as well as all other Amerindo investors who have been unable to access their investments since before Messrs. Vilar's and Tanaka's arrests in 2005 – during the pendency of the defendants' appeal of the criminal action and the Forfeiture Order.

As noted in the Commission staff's previous letters, the parallel criminal action has resulted in the forfeiture of substantially all of the defendants' assets. While the Commission staff supports efforts to expedite the Amerindo investors' receipt of their investments, we are awaiting the resolution of the criminal appeal to make any further recommendation to the Commission concerning final disposition of this action (which, as we have previously advised, includes broader allegations and encompasses a larger investor pool than the action adjudicated in the parallel criminal action). In particular, if the Forfeiture Order were to be overturned, thereby releasing any restraints on the defendants' assets, the Commission would aggressively litigate this action – and would possibly seek, among other remedies, an asset freeze over any remaining assets – to ensure that the defendants disgorge any ill gotten gains and investors are compensated appropriately. Alternatively, if the Forfeiture Order is upheld and all of the

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defendants' assets forfeited to the Department of Justice for distribution to the Amerindo investors, the Commission staff would consider that fact when making any further recommendation to the Commission regarding disposition of this action. At a minimum, any resolution of the case would involve injunctive relief against the individual defendants based upon principles of collateral estoppel arising from the criminal convictions.

Finally, Your Honor has scheduled a Status Conference for July 29, 2011. The staff, joined by Mr. Vilar's counsel, respectfully requests that Your Honor reschedule the Status conference until September 14, 2011, in order to provide time for the parties to continue the discussions referenced above.

Please advise if any further information would be of assistance to the Court.

Respectfully submitted,



Mark D. Salzberg
Senior Counsel

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The conference is
adjourned to
September 14, 2011, at
2:30pm. The SEC must
arrange for Mr Tanaka's
telephonic participation.

SO ORDERED.

NEW YORK, NY


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LAURA TAYLOR SWAIN
UNITED STATES DISTRICT JUDGE

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